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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 979 67

SUSIE WILLIAMS ET AL.,

Petitioners,

vs.

ALLEN TOOKE ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF AND ARGUMENT IN SUPPORT THEREOF.

D. A. McAskill,
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Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Susie Williams, Christine Catherine Williams Sparks, Virgil E. Williams Scott, Wesley Williams, Theordes Williams, Clyde Williams, Booker T. Williams, Herman Williams, Luria Williams, Jesse Northcutt, E. O. Swallow, Dolly Taylor, T. C. Lewis, O. L. Norton, Elizabeth Kenedy, Lawrence Birdsong, and W. O. Avery, hereinafter styled petitioners, respectfully present this their petition for writ of *certiorari* as against Allen Tooke and some forty other defendants (a list of whose names would unnecessarily encumber this petition for *certiorari,* and all of whom are hereinafter referred to as respondents), seeking hereby to obtain a writ of *certiorari* to review a final decision of the United States Circuit Court of Appeals for the Fifth Cir-

cuit, rendered in this case between these parties on the 9th day of January, 1940, and finally, by the overruling of a petition for rehearing seasonably filed in that court by an order entered on the docket of said court on the 18th day of March, 1940, which action by that court affirmed a decree of the United States District Court for the Eastern District of Texas at Tyler dismissing the bill of complaint of your petitioners exhibited there against all of said respondents.

Your petitioners respectfully file herewith, as an exhibit to this petition, duly certified copies of the record in said case, including the proceedings in the United States Circuit Court of Appeals; and also file herewith the necessary printed copies of said record and of this petition.

Statement of the Matters Involved.

This was an equity suit filed in the District Court of the United States for the Eastern District of Texas by Susie Williams and the other petitioners herein against Allen Tooke and some forty others, the respondents herein, wherein the plaintiffs sought to engraft a trust on a judgment which had been rendered against petitioners and in favor of the respondents or their privies in the District Court of Gregg County, Texas, and which had been by petitioners duly appealed to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, which court, on said appeal, affirmed the judgment below, and overruled a motion for rehearing therein which was seasonably filed, and which judgment of affirmance was finally purportedly affirmed by the Supreme Court of Texas.

Federal jurisdiction was asserted on the grounds of a Federal question, *i. e.*, that the action of the said State courts was and is arbitrary, capricious and unjust and contrary to the guarantees afforded by the "due process"

clause and the "equal protection" clause of the Fourteenth Amendment to the Constitution of the United States.

Equity jurisdiction was asserted upon the ground that said State court judgments were tainted with fraud, *i. e.*, the result of a fraudulent combine between said State appellate judges and the respondents, and that such judgment was impossible in a rational administration of justice.

The case made by the Amended bill and its exhibits is this:

On March 14, 1917, respondent B. F. Phillips conveyed unto Porter Williams (petitioners' predecessor) 102.26 acres of land situated in Gregg County, Texas; the consideration for the conveyance was $785.00 cash paid by said Williams out of his separate estate and the execution of three promissory notes aggregating $800.00, due in one, two and three years, secured by vendor's lien, with option of acceleration; said Williams died intestate in December, 1917, seized of the land, subject to said debt, and was survived by his widow, Susie, and eight children, all minors (of petitioners); that the Constitution and statutes of Texas confers exclusive, original jurisdiction of all matters appertaining to the estates of deceased persons in the County Courts of each County; in November, 1918, said Phillips declared the full amount of said debt due as though by lapse of time and filed in the District Court of Gregg County a suit against said widow and minor children as heirs at law of said Porter Williams, deceased, to enforce his debt for the full amount of said three notes and to foreclose his lien on said land; judgment was entered by said court foreclosing said lien and the land ordered to be and it was sold to John T. Buckley; the other respondents claim said land by *mesne* conveyances from and under said Buckley. In 1933, said Susie Williams and her children, some of whom were still under disability of minority, together with the other petitioners who are purchasers from some of

Williams' children, filed suit in said state District Court against respondents to redeem said land from said vendor's lien and offered to do equity, contending that said judgment of foreclosure was void. This suit resulted in a "take nothing" judgment against petitioners. This case was duly appealed by petitioners to the Court of Civil Appeals for the Sixth Supreme Judicial District of Texas, and in due course said Court announced its decision in that case (which is copied in full as Exhibit "B" to the Amended bill, R. 133), by which said Court affirmed the judgment below. It was set forth in said Amended bill that by the Constitution and laws of Texas, the Supreme Court of the State consists of a Chief Justice and two Associate Justices, and that a concurrence of two of the judges thereof is necessary to the decision of a case (R. 167), and an appeal lies, as was here taken to the Supreme Court of the State, and its jurisdiction is invoked by making application for writ of error, and if it be of opinion that the decision so appealed is correct its duty is to dismiss the application for writ of error (R. 93), and that in due course your petitioners caused to be filed in said Supreme Court their application for writ of error in said cause, and that said court finally purportedly dismissed said application and thereby purportedly approved the decision of said Court of Civil Appeals, and it was appropriately alleged as a fact, with particularity, conciseness and clarity, that the judgment of dismissal so complained of was not the judgment of the Supreme Court of Texas, but was the judgment of but one member of said Court, if any, whereas, according to the Constitution and laws of the State, the petitioners, as are all others similarly situated, were and are entitled to have their case passed on by a majority of said Court, and that, in fact and in law, said Court had no jurisdiction to render any decision except upon the concurrence of at least two of its members;

that such law was, as to these petitioners, administered by said Court (the authorities of the state charged with the administration of its laws) arbitrarily and capriciously, in that the decision purporting to be concurred in, was arrived at without any inquiry into or investigation or consideration of the facts thus attempted to be determined or of the settled rules of law applicable thereto; and unjustly in that the judgment was wholly unsupported by the record, which established without dispute and beyond controversy that the matters thus arbitrarily and capriciously decided were completely and wholly without foundation which would have been revealed by an investigation and inquiry, and in consequence of which, it was averred, the enforcement of a judgment evolved by such an administration of the law would deprive the petitioners of their property without due process of law and also deny to them the equal protection of the laws, in violation of the guarantees of the Fourteenth Amendment to the Constitution of the United States.

By appropriate allegations it was set up that after said case was appealed to said Court of Civil Appeals, the appellees therein (respondents here) entered into an agreement with the judges of said appellate court wherein it was agreed that if said appellate court would ignore the law and facts and irrespective thereof affirm the said judgment below, they would procure the Supreme Court to refuse a writ of error therein, which they did (R. 85), and it was alleged as a fact, with particularity, conciseness, and clarity, that the several holdings of said appellate court making up said judgment of affirmance, are a "mere arbitrary and capricious exercise of powers of government," and contrary to that accorded to others similarly situated, and with particularity avers that each of said court's holdings is contrary to the indubitable facts and that its application of the law in respect thereto, conflicts with those

fundamental principles which have been established in our system of jurisprudence for the enforcement and protection of private rights, and further conclusively and concisely shows that each of said holdings is so gross as to be impossible in a rational administration of justice, and with clarity shows that each of said holdings are, of itself, a badge of fraud, and further that each of said holdings is wholly sham and a mere fraudulent contrivance designed solely to give the appearance of legality and protection against attack to what is, in fact, nothing but the taking of petitioners' property without consideration, and which scheme was carried out by reason of the corrupt acts of said appellate judges, acting as the alter ego's for respondents, and it is also alleged with particularity, conciseness, and clarity, that had it not been for the deliberate fraud of said appellate judges, the judgment of the said district court would have been reversed and judgment rendered for the petitioners.

It is alleged that the order of the Supreme Court dismissing petitioners application for writ of error was not the act of the court, but was the sole act of Judge Critz which he clothed in the form of judicial sentence with the intent to make it appear that such was the act of the court, and that he caused said order to be entered with the intent to defraud (R. 167-170).

It is alleged that thus respondents acquired petitioners' property by so corrupting said courts, and prayed that they be decreed to hold as trustees and required to account.

These facts were, of course, alleged more at length in the bill, but we deem the foregoing a sufficient statement of the case, because the holding of the Circuit Court of Appeals, complained of, is, in effect, that notwithstanding the existence of Federal jurisdiction, the District Court had no jurisdiction to engraft a trust on the State Court judg-

ment, because in order to do so it would have to set aside the state court judgment.

The lower court sustained a motion to dismiss (R. 155), and entered judgment dismissing the bill and petitioners excepted (R. 174); the court filed its opinion (R. 175).

Afterwards, in due course, petitioners perfected an appeal from said judgment; and a transcript of all the proceedings containing all the foregoing was lodged in said United States Circuit Court of Appeals and said cause was entered and docketed in said Court, entitled *Susie Williams, et al., Appellants* v. *Allen Tooke, et al., Appellees,* and numbered 9273 on said docket.

Upon due consideration the Circuit Court of Appeals, on the 9th day of January, 1940, affirmed the decision of the lower court, its opinion being reported as *Williams* v. *Tooke,* 108 F. (2d) (758) (R. 182). In due course petition for rehearing was duly filed (R. 188), and on March 18, 1940, the petition was denied (R. 203).

Thereby said court expressly held that even though the state court judgment was tainted with fraud, still an independent suit could not be maintained in the district court to secure equitable relief therefrom, which, we say, is contrary to the doctrine of Arrowsmith v. *Gleason, 129 U. S. 86.*

Your petitioners aver that the reasons for requesting this writ of *certiorari* to bring said cause to this Court for review, and upon review, reversal, are:

(a) That the Circuit Court of Appeals has decided an important question of Federal law, which (while we contend that by analogy it has been decided by the decisions of this Court, and decided contrary to the decision reached by the Circuit Court of Appeals, the decision of which court we fully believe to be contrary to the applicable decisions of this Court) should be settled by this Court, and of which the Circuit Court of Appeals in its decision, in

effect, held that, although the lower court had Federal jurisdiction on account of the alleged Federal question, and the bill sought to engraft a trust on the State Court judgment and to have defendants held as trustees and required to account, still such relief could not be granted by the District Court, because it has no power to reverse or modify a State Court judgment, and cited *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, as authority.

(b) That said Circuit Court of Appeals has decided an important question of Federal law which, we contend, is in conflict with the decisions of other Circuit Courts of Appeals on the same matter.

(c) That said Circuit Court of Appeals has decided an important question of general law in a way probably untenable and in conflict with the weight of authority.

(d) That said Circuit Court of Appeals in its decision has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's power of supervision.

(e) That the questions involved in this case, and which will be presented on this review, are of great and immediate importance to the people of the State of Texas, and to the people of the United States and elsewhere who may have controversies involving the doctrine of trusts as applied to judgments tainted with fraud.

Under the allegations of the bill (and, of course, in the present state of the case must be taken as true), the judgment and decisions of the State Courts complained of and brought under inspection were the result of a fraudulent combine between the appellate judges and the defendants therein, and if the validity of such judgments so obtained by fraud and brought under inspection be upheld as it has

been by the Circuit Court of Appeals, it seems to us the upholding of such action will be a repudiation of the principles of equity as previously announced by numerous decisions of this Court in analogous cases.

Moreover, we are of opinion that this Court has repeatedly held that a Federal district court may, if other jurisdictional questions are present, engraft a trust on a State Court judgment which is tainted with fraud without setting aside or annulling the judgment assailed.

Finally, we have an abiding conviction that the efficacy of courts and decrees will be increased and strengthened, when it is known that this High Court will engraft a trust upon a judgment obtained by the fraud of the court or judge.

As part of this petition, and in support of the same, we present herewith a brief. If our brief seems long, it is no more so than the great importance of the case justifies.

May it please the Court, therefore, to grant unto petitioners a writ of certiorari, to be directed to the Judges of the Circuit Court of Appeals for the Fifth Circuit, thereby commanding them, upon receipt of said writ, to certify and remove said cause, the record therein, and all proceedings thereon, into this Court; and to stand and abide such order and direction as this Court shall deem meet and the circumstances of the case require, for all of which petitioners will ever pray.

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